

Office of the Secretary of Defense

§ 169a.2

(12) Provide, when requested, assistance to installation commanders to ensure effective CA program implementation and technical competence in management and implementation of the CA program.

(13) Ensure that maximum efforts are exerted to assist displaced DoD employees in finding suitable employment, to include, as appropriate:

(i) Providing priority placement assistance for other Federal jobs.

(ii) Training and relocation when these shall contribute directly to placement.

(iii) Providing outplacement assistance for employment in other sectors of the economy with particular attention to assisting eligible employees to exercise their right of first refusal with the successful contractor.

(14) Maintain the technical competence necessary to ensure effective and efficient management of the CA program.

(15) Ensure, once the cost comparison is initiated, that the milestones are met, and completion of the cost comparison is without unreasonable delay.

PART 169a—COMMERCIAL ACTIVITIES PROGRAM PROCEDURES

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AUTHORITY: 5 U.S.C. 301 and 552.

SOURCE: 50 FR 40805, Oct. 7, 1985, unless otherwise noted.

Subpart A—General

§ 169a.1 Purpose.

This part:

(a) Reissues DoD Instruction 4100.33¹ to update policy, procedures, and responsibilities required by DoD Directive 4100.15² and OMB Circular A-76³ for use by the Department of Defense (DoD) to determine whether needed commercial activities (CAs) should be accomplished by DoD personnel or by contract with a commercial source.

(b) Cancels DoD 4100.33-H,⁴ "DoD In-House vs. Contract Commercial and Industrial Activities Cost Comparison Handbook."

§ 169a.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Defense Agencies and DoD Field Activities (hereafter referred to collectively as the "DoD Components").

(b) Contains DoD procedures for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

²See footnote 1 to § 169a.1(a).

³Copies may be obtained if needed, from the Office of Management and Budget, Executive Office Building, Washington, DC 20503.

⁴See footnote 1 to § 169a.1(a).

staffed partially with DoD civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by non-appropriated funds.

(d) Does not apply to DoD governmental functions are defined in §169a.3.

(e) Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

(f) Does not apply in times of a declared war or military mobilization.

(g) Does not provide authority to enter into contracts.

(h) Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in appendix A to this part.

(i) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(j) Do not authorize contracts that establish employer-employee relations between the Department of Defense and contractor employees as described in the Federal Acquisition Regulation (FAR), 48 CFR 37.104.

(k) Does not establish and shall not be construed to create any substantive or procedural basis for anyone to challenge any DoD action or inaction on the basis that such action or inaction was not in accordance with this part except as specifically set forth in §169a.15(d).

[57 FR 29207, July 1, 1992]

§ 169a.3 Definitions.

Commercial activity review. The process of evaluating CAs for the purpose of determining whether or not a cost comparison will be conducted.

Commercial source. A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

Conversion to contract. The change-over of a CA from performance by DoD

personnel to performance under contract by a commercial source.

Conversion to in-house. The change-over of a CA from performance under contract by a commercial source to performance by DoD personnel.

Cost comparison. The process of developing an estimate of the cost of performance of a CA by DoD employees and comparing it, in accordance with the requirements in this part, to the cost to the Government for contract performance of the CA.

Directly affected parties. DoD employees and their representative organizations and bidders or offerers on the solicitation.

Displaced DoD employee. Any DoD employee affected by conversion to contract operation (including such actions as job elimination, grade reduction, or reduction in rank). It includes both employees in the function converted to contract and to employees outside the function who are affected adversely by conversion through reassignment or the exercise of bumping or retreat rights.

DoD Commercial Activity (CA). An activity that provides a product or service obtainable (or obtained) from a commercial source. A DoD CA is not a Governmental function. A DoD CA may be an organization or part of another organization. It must be a type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in Enclosure 1. A DoD CA falls into one of two categories:

(a) *In-house CA.* A DoD CA operated by a DoD Component with DoD personnel.

(b) *Contract CA.* A DoD CA managed by a DoD Component operated with contractor personnel.

DoD Employee. Refers to only civilian personnel of the Department of Defense.

DoD governmental function. A function that is related so intimately to the public interest as to mandate performance by DoD personnel. These functions require either the exercise of discretion in applying Government authority or the use of value judgement